

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-)	
Based Services to Rural Areas and)	WT Docket No. 02-381
Promoting Opportunities for Rural)	
Telephone Companies To Provide)	
Spectrum-Based Services)	
)	
2000 Biennial Regulatory Review)	
Spectrum Aggregation Limits)	WT Docket No. 01-14
For Commercial Mobile Radio Services)	
)	
Increasing Flexibility To Promote Access to)	
and the Efficient and Intensive Use of)	WT Docket No. 03-202
Spectrum and the Widespread Deployment)	
of Wireless Services, and To Facilitate		
Capital Formation		

To: The Commission

**COMMENTS OF THE
NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

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The National Rural Telecommunications Cooperative (NRTC), by its attorneys, hereby submits these Comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Commission in the above-captioned proceeding.¹ In its NPRM, the Commission asks how it can best promote the rapid and efficient deployment of quality spectrum-based services in rural areas.²

NRTC believes that the Commission can achieve its mandate of rapid and efficient deployment of spectrum-based services in rural areas through several moderate revisions to its

¹ Notice of Proposed Rulemaking, *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, 18 FCC Rcd. 20802 (released October 6, 2003) (*Rural NPRM*).

² *Rural NPRM*, ¶1.

existing rules and policies.³ First, for many of its terrestrial wireless services, the Commission should allow a more appropriate substantial service test as an alternative to its geographic and population based construction requirements. Second, NRTC encourages the Commission to implement certain other changes to its rules -- including power limits and definitions of spectrum use -- that also may enhance rural spectrum deployment. Finally, NRTC stands ready to assist the Commission and the Rural Utilities Service (RUS) in their joint program aimed at advancing rural spectrum deployment.

I. COMMENTS

A. NRTC LLC's 220 MHz System.

1. NRTC is the Manager of NRTC LLC, which is the holder of nine FCC licenses granting exclusive use of twenty-two 220 MHz radio channels nationwide: (1) a 5 channel Phase I Nationwide license; (2) a 10 channel Phase II Nationwide license; and (3) seven 7 channel Phase II Regional licenses (two in Region 3 and one in each of the five remaining geographic regions) covering the entire continental United States.⁴

2. Consistent with its responsibilities as FCC licensee of the system, NRTC LLC makes its 220 MHz channels available to NRTC's members primarily for wireless communications that support the members' electric distribution systems and other core business operations.⁵ NRTC has worked to provide scalable packaged solutions for private

³ See e.g., 47 U.S.C. §309(j)(4)(B) ("the Commission shall . . . include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas.").

⁴ NRTC, through its members and affiliates, also distributes DIRECTV Direct Broadcast Satellite (DBS) programming to more than 1,700,000 rural households. In addition, along with Liberty Satellite, LLC and Intelsat USA Sales Corporation, NRTC recently invested \$156 million (NRTC itself invested \$29 million) in WildBlue Communications, Inc. (WildBlue), a Ka-band satellite licensee. WildBlue is expected to be the first viable Ka-band spot beam satellite using technology designed to lower the cost of providing rural consumers and others with high-speed Internet access via satellite. Due to nature of the NPRM, however, NRTC limits its comments to its terrestrial wireless services.

⁵ Currently, 11 members of NRTC LLC have obtained rights to use NRTC LLC's 220 MHz frequencies in 19 states. An even larger number of rural electric cooperatives are benefiting from the services being provided by

industrial communications systems, internal dispatch services and wireless telemetry applications such as Supervisory Control And Data Acquisition (SCADA) systems necessary to manage and control electric transmission and distribution systems throughout rural America.⁶

B. In Rural Areas, The Substantial Service Standard May Be Appropriate For Measuring Compliance With Construction Benchmarks.

3. As NRTC stated in comments submitted in response to the Commission's Notice of Inquiry, to satisfy the Commission's construction milestones licensees tend to build out their systems in more densely populated (*i.e.*, non-rural) areas.⁷ In the NPRM, the Commission agreed with NRTC's analysis and recognized that licensees have both an economic and practical incentive to achieve compliance with these requirements by providing service primarily to urban portions of a licensed area.⁸ The Commission expressed justifiable concern that its geographic and population coverage benchmarks encourage deployment of services in more populated and urban settings -- at the expense of coverage in rural areas.⁹

4. The "substantial service" test avoids this unintended consequence by taking into account more than just land mass or population coverage. For example, licensees may satisfy the substantial service standard by ensuring that a percentage of their buildout contains "rural"

these 11 members. For example, in Kansas, 15 electric cooperatives are utilizing the 220 MHz system and in Georgia that number is anticipated to reach 20. Other states -- particularly Alabama, Alaska and Texas -- provide service to a large number of rural electric cooperatives as well.

⁶ Commercial services also may be provided, consistent with the Commission's requirements.

⁷ Notice of Inquiry, *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, 17 FCC Rcd. 25554, WT Docket No. 02-381 (released December 20, 2002) (*Rural NOI*). *See also*, Comments of the National Rural Telecommunications Cooperative, submitted February 3, 2003, in response to the *Rural NOI*, p. 7 (*NRTC Rural NOI Comments*).

⁸ *Rural NPRM*, ¶36.

⁹ *Id.*

counties,¹⁰ or by providing service to niche markets or populations with limited access to telecommunications services.¹¹

5. NRTC LLC's 220 MHz system serves as an example of why a substantial service test can be a reasonable option for ensuring deployment of services to rural areas. NRTC LLC's system serves the communications requirements of rural electric cooperatives, which cover 75 percent of the land mass throughout 46 states yet serve just 12% of the population.¹² Even with the rural focus of its 220 MHz system, the Commission's 220 MHz rules require NRTC LLC to satisfy specific population or geographic milestones. NRTC has requested that a substantial service standard be applied in lieu of population or geographic coverage requirements.¹³

6. The Commission has previously noted the value of a substantial service standard in the context of ensuring service to rural America. For example, when the Commission amended its Personal Communications Service (PCS) rules in May 2000, it noted that a substantial service standard would be "very useful," since it would allow licensees to use spectrum flexibly to provide new and innovative services uninhibited by a requirement that they meet a

¹⁰ *Id.* ¶41 (stating that a licensee will be deemed to have met the substantial service requirement if it provides $\frac{3}{4}$ coverage to at least 20 percent of the "rural" counties within its licensed area, with "rural" counties defined as those with a population density of approximately 100 persons per square mile);

¹¹ Report And Order, *Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules*, 17 FCC Rcd 9980, ¶75 (released May 24, 2002).

¹² See NRECA White Paper On Distributed Generation, p. 21 (stating that "cooperatives serve over 32 million consumers in 46 states . . . and serve 75% of the country's total land mass.") (available at <<http://www.nreca.org/nreca/Policy/Regulatory/Documents/DGWhitepaper.pdf>>) (visited December 19, 2003).

¹³ See Correspondence from Jack Richards, counsel for the National Rural Telecommunications Cooperative, to Roger Noel, Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau (dated October 2, 2003) (*NRTC Letter*). The *NRTC Letter* requests that a substantial service standard be applied to NRTC LLC's 220 MHz authorizations.

specific coverage benchmark.¹⁴ The Commission ultimately concluded that a substantial service standard would actually “encourage [licensees] to build out in rural areas.”¹⁵

7. NRTC urges the Commission to adopt a broad substantial service test for all wireless licensees. In doing so, wireless licensees will have a greater incentive to deploy services to rural areas, thereby achieving a primary Commission goal. Unlike the artificial geographic and population benchmarks, substantial service benchmarks will encourage licensees to deploy wireless service where it is actually needed -- in rural and underserved areas.

C. Adoption Of Other Commission Recommendations May Encourage Deployment Of Wireless Services In Rural Areas.

8. In its NPRM, the Commission makes a number of other recommendations that NRTC believes may warrant implementation by the Commission.

1. Relaxation Of Power Limits.

9. The NPRM asks whether the Commission should consider relaxation of its power limits. In some circumstances, this may be a reasonable way to ensure more widespread deployment in rural areas. For instance, the South Dakota Telecommunications Association (SDTA) has pointed out that higher power levels could reduce the number of transmitters

¹⁴ Second Report and Order and Second Further Notice of Proposed Rule Making, *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 15 FCC Rcd 10456, 26 (released May 18, 2000) (*PCS Order*).

¹⁵ *PCS Order*, ¶26. The Commission reached a similar conclusion, when it amended its 800 MHz construction rules by adopting a substantial service standard for certain EA licensees. See Memorandum Opinion And Order on Reconsideration, *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, 14 FCC Rcd 17556 (released October 8, 1999) (*800 MHz Order*). In that proceeding, the Commission stated that a substantial service standard actually “encourages build-out in rural areas since one of the ways in which a licensee may satisfy the substantial service requirement is to demonstrate that it is providing service to unserved or underserved areas, which are often rural areas.” *800 MHz Order*, ¶18.

required to connect stretches of roadways between small rural towns and to serve ranches and farms beyond the highways.¹⁶

10. As the Commission noted in its NPRM, increasing the range of radio systems through increased power levels is one means of making it more economical to provide spectrum-based radio services in rural areas.¹⁷ Of course, any such adjustments to power levels should be coupled with clear and enforceable interference protections.¹⁸

2. Spectrum Use And Construction.

11. The Commission asks whether spectrum in rural areas that is leased by a licensee, and for which the lessee meets the performance requirements that are applicable to the licensee, should be construed as “used” with respect to the licensee’s performance and construction requirements.¹⁹ The Commission’s recent Order developing secondary markets in spectrum usage rights appears to have resolved this issue (*Secondary Markets Order*).²⁰

12. The Commission concluded in its *Secondary Markets Order* that so long as a licensee retains *de jure* or *de facto* control over a license, the activities of the spectrum lessees can be counted towards the build-out requirements for a particular license authorization.²¹ NRTC supports this conclusion.

¹⁶ *Rural NPRM*, ¶51; *See also*, *SDTA Comments*, p. 17.

¹⁷ *Id.*, ¶52. The Commission noted that costs of deployment are decreased, through the associated drop in infrastructure costs.

¹⁸ *Id.*, ¶51; *See also*, Comments of SDTA, submitted February 3, 2003 in response to *Rural NOI*, p. 17 (*SDTA Comments*).

¹⁹ *Rural NPRM*, ¶¶19-20.

²⁰ Report and Order and Further Notice of Proposed Rulemaking, *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, 18 FCC Rcd. 20604 (released October 6, 2003) (*Secondary Markets Order*).

²¹ *Secondary Markets Order*, ¶¶ 114, 146.

D. NRTC And Its Members Stand Ready To Assist In The FCC/RUS Outreach Partnership.

13. In its NPRM, the Commission states that it is actively seeking partners for its Federal Rural Wireless Outreach Initiative (FCC/RUS Outreach Partnership).²² The FCC/RUS Outreach Partnership is designed to exchange program and regulatory information about rural development and wireless telecommunications access in rural areas.

14. NRTC would be pleased to assist the FCC and RUS in its efforts through the FCC/RUS Outreach Partnership. In doing so, NRTC can offer its own expertise and experience, as well as that of its 736 rural electric cooperatives, 147 rural telephone cooperatives and 203 independent rural telephone companies located throughout 48 States.

15. Not-for-profit organizations and small independent telephone companies are ideally suited to achieve widespread deployment of spectrum-based services in rural areas.²³ Unlike their larger, publicly traded, for-profit counterparts, not-for-profit organizations need not demand high returns on their investments to satisfy shareholders. Similarly, small, independent telephone companies while organized on a for-profit basis, are more geared to the needs of their customers than their nationwide counterparts.

16. The FCC/RUS Outreach Partnership appears ideally suited for furthering the accomplishments of the rural electrification and telephone programs of the 1930's: delivery of a critical service -- taken for granted by most Americans -- to America's rural communities.²⁴

²² *Rural NPRM*, ¶78, See also News Release, *FCC and USDA Hold Kick-Off Meeting of the 'Federal Rural Wireless Outreach Initiative'*, 2003 WL 21511807 (released July 2, 2003).

²³ *NRTC Rural NOI Comments*, pp. 14 - 16.

²⁴ The four key goals of the FCC/RUS Outreach Partnership are to: (1) exchange information about products and services each agency offers to promote the expansion of wireless telecommunications services in rural America; (2) harmonize rules, regulations and processes whenever possible to maximize the benefits for rural America; (3) educate partners and other agencies about Commission, WTB and USDA/RUS offerings; and (4) expand the FCC/WTB and USDA/RUS partnership, to the extent that it is mutually beneficial, to other agencies and partners. *Rural NPRM*, ¶76.

The success of these rural programs is largely attributable to the rural utility cooperatives organized in response to the establishment of the Rural Electrification Administration (REA) (now the RUS) and related government programs. NRTC and its members stand poised to continue this tradition by participating in the FCC/RUS Outreach Partnership.

II. CONCLUSION.

The Commission should take all steps necessary to promote the deployment of spectrum-based services in rural areas. The addition of a substantial service benchmark would release licensees in rural areas from the artificial population and geographic coverage requirements. Further adjustments to the Commission's rules allowing increased power limits and broader definitions of spectrum use could provide additional benefits. As a result, rural Americans will have a better chance of obtaining access to essential spectrum-based services regardless of their location. NRTC stands ready to assist the Commission and the RUS in attaining this important goal.

Respectfully submitted,

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Dated: December 29, 2003

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 29th day of December, 2003, a true and correct copy of the foregoing Comments of the National Rural Telecommunications Cooperative in the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services (WT Docket No. 03-202) was submitted via electronic filing to the Federal Communications Commission and served via electronic mail upon the following:

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